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BOOK REVIEWS

Law As Liberator. By Joseph C. Hutcheson, Jr.[1] Chicago: The Foundation Press, Inc. 1937. Pp. ix, 201. $2.50.

In a day of carping at the Constitution and the courts this convincing little treatise is refreshing. With bold, confident words our author speaks out and assures us that all is well. Our government is one of laws and not of men. It is social minded and progressive. A steady drive is on to make the insecure secure. Justice has become an aspiration rather than a policy. The common law of the Constitution is ample for all governmental functions, this side of the impossible. There is no need for an over-night, revolutionary amendment. No one now doubts that owners of property are fixed with a trust for the benefit of their fellows. The Justice of the General Will is at hand. America is meeting its obligations to the underprivileged. No one doubts the duty of governments to those unfortunates who are the by-products of a machine age and a severe social tension. Great winds seem to be blowing, throwing open closed shutters of prejudice and ignorance, letting in the sweet air and the full light of justice. America will have no *Recovery by Revolution,* as Calverton suggests. None is needed. Nor is there any vogue for state totalitarianism. The three departments of government—the executive, the legislative and the judicial—are and must be separate and independent. Destroy this trinity and you crush the spirit of justice, enthrone factions and invite tyranny. So admirably have the checks and balances of the government functioned that the demands of society—of rich and poor—have been met. America is abreast of social progress. Workmen's compensation acts, old-age pensions, aid to the unemployed, regulation of hours, free hospitals, free clinics, free parks and playgrounds, free textbooks, free busses, high income and inheritance taxes on the rich, low farm taxes and no income tax on small incomes, these, and other beneficent laws, measure the rapid approach of America to that divine event—the Peace of Social Justice. Why should such a favored people fret?

And how could America have failed herein? Her founders were not visionaries, they were wise and level-headed. They understood that governments derive their just powers from the consent of the governed. Though they created a new government they recognized the sovereignty of the States. They formulated a Constitution which not only restricted the powers of the general government but safeguarded the inalienable rights of the very smallest of the States. Moreover, they

[1] Judge United States Circuit Court of Appeals, Fifth Circuit.

agreed with Jefferson that neither the legislature nor the executive ought to or could change the Constitution. This momentous step the people, and the people only, could take. Law is consent and will, and consent and will is law. Restraint is the price of liberty. It is easier to gain liberty than to preserve it. *Lex* (law) is master; not *Rex* (king).

Thus wisely and learnedly does the author of *Law As Liberator* speak. And he fortifies his premises with convincing authority and apt quotations from law-givers and philosophers. But just here we note a strange omission: the phrase, "New Deal," nowhere appears. Nor is F. D. Roosevelt's name mentioned at all. Lengthy humanitarian excerpts from the writings of Theodore Roosevelt and Woodrow Wilson may be found, but not a syllable from Franklin Roosevelt. Not one reference to the bill to pack the Court and change the constitutional intent. Was the omission intentional? At all events it brings on further talk.

When our author asserts that the idea of a totalitarian state is abhorrent to the American people, is not the wish father to the thought? Let us see. The bill to increase the Court was popular: it almost became a law. If the Court had been so manipulated as to sanction any act of Congress, would not America have been *(ipso facto)* totalitarianized? Who may doubt that with such a court and a congress, shot through, not with democracy but with New Dealism, laws eventually would go on the books turning over to the National Government public schools, colleges and universities, and also the railroads, steamboats, telegraph and telephone companies, electric light, power and gas companies, and all other industries engaged in manufacturing the necessities of life? This "rounded whole," nothing save our honest, constitution-loving court may prevent.

In a recent work by Marquis W. Childs[2] the success of Sweden in destroying the match trust is explained. Unable to crush this corporation through legal channels Sweden has gone into the match making business. No private enterprise may survive government competition. By means of the T. V. A. and other schemes, is not America about to throttle the private hydro-electric business as Sweden has done the match business? This extra-constitutional and totalitarian phase of recent American legislation should not have escaped, we submit, the trenchant pen of Judge Hutcheson.

In concluding I would say of *Law As Liberator* that it is more a lawyer's brief than a popular or dispassionate essay—a fact which the author candidly admits. A score of times we may read such strong expressions as: "This has ever been true and will always be true."

[2] CHILDS, SWEDEN: THE MIDDLE WAY (1936).

Again, the thoughtful work suffers from lack of literary finish; the sentences are oftentimes long, obscure, repetitious; that is, merely lawyer-like. In setting out to enumerate the facts which the Fathers knew, the author begins a sentence with the word "First." But there is no second, no third. The argument continues, but the reader must pick out the succeeding propositions, if he can. Moreover, basic statements are often tacked on incidentally and great thoughts are introduced with some weak, insignificant part of speech. Thus the true aspects of justice are stated in sentences each of which begins with the inconsequential word "whether."

These defects, however, are of a minor character. Mere spots on the sun. The book should be in every American home. It has antiseptic properties; it may, even yet, sterilize a deal of noxious propaganda passing for wisdom.

ROBERT W. WINSTON.

Chapel Hill, N. C.

The Trial Judge. By Henry T. Lummus. Chicago: The Foundation Press, Inc. 1937. Pp. iv, 148. $2.00.

Here is a book which every trial lawyer would delight to present to every trial judge and, if the donation were anonymous, certain of the copies would be appropriately marked! Tempting paragraphs are to the effect that a judge ought not to impose extravagant sentences on those convicted by a jury in order to force others to plead guilty (p. 48); that a judge who is a courteous gentleman can do anything which is right without arousing resentment but one who does right boorishly gives all spectators the lasting conviction that judges are petty tyrants swollen with self-importance (p. 21); and that the judicial humorist is included in the list of those who would never be missed (p. 23)!

In some of the free copies the red pencil would undoubtedly heavily underline the pronouncement that some of the weakest judges are seldom reversed on appeal because they charge the jury vaguely, coerce counsel into settling cases which bristle with questions of law, distort the facts heard without a jury so as to escape troublesome questions, and cheat in preparing the record for appeal, whereas a strong judge, intent on justice, scorns such expedients (p. 34). Marked also might be the statements that he is a lost judge who begins to think of himself as the father of the community and to collaborate with the police in keeping order (p. 83), and that it is a narrow, incompetent judge who thinks of people as either white or black at heart and recognizes no bond of sympathy with the vast army of the somewhat discolored. (p. 55).

The trial lawyer will find satisfaction in this book not only because it expresses many of his sentiments about the judiciary better than he could express them himself, but also because they are expressed by a justice of the Supreme Judicial Court of Massachusetts who was for many years a trial judge. The book is the publication of a series of three lectures provided by the Julius Rosenthal Foundation for General Law and delivered at the Law School of Northwestern University in Chicago in March, 1937.

But the purpose of this book is not to lay down precepts for judges —and the lawyers themselves come in for some criticisms, among them being the usual one that most lawyers merely wish to live and die under the rules to which they have become accustomed (p. 16). The gospel which Judge Lummus is preaching and the thesis of his book is judicial independence—judicial independence not only in the superior courts but also in the courts of the recorder and the justice of the peace "who have more opportunities for good or evil in a week than a judge of the supreme court has in a year" (ft. n. p. 80). The author also recognizes the fact, which every trial lawyer knows, that a high quality of judicial service is more important in the trial courts than in the court of last resort because no system of appeals can correct or even neutralize all the errors and misdeeds of a trial judge (p. 7).

Left free to do their duty all judges, the author thinks, will do impartial justice to the best of their understanding but "coercion is the very bone and marrow of the elective system" (p. 94). In the elective system and the limited terms of office inherent in the system, Judge Lummus finds the outstanding blunder and most tragic failure of American democracy (p. 148). In the last chapter of his book is a plan which he believes would eliminate the spectacle of a candidate for judicial office soliciting votes, "galloping about from ward club to ward club telling the employees of the state highway or city street cleaning department what splendid Democrats or Republicans they are" (ft. n. p. 96), and having to attend weddings, funerals, christenings, barbecues, clambakes, receptions, opening nights, lodge entertainments, prize-fights, and church festivals (ft. n. p. 100). As between the evils of the elective system and political appointments to the bench the author would choose appointments: "There is no certain harm in turning a politician into a judge. He may be or become a good judge. The curse of the elective system is the converse, that it turns almost every judge into a politician" (p. 138).

Choosing from the various proposed plans for judicial selection Judge Lummus suggests that all judges, from top to bottom, be appointed by a Minister of Justice with the advice and consent of an

advisory council. The Minister of Justice would be elected by popular vote for a period of four years without eligibility for reelection, and at the end of his term he might become a trial judge so that his future would be assured and the temptation to play politics be removed. The advisory council might be appointed by the Governor or elected by districts. The power to remove a judge would not be vested in the Minister and his council but in the Supreme Court or in the concurrent action of the Governor and both houses of the legislature.

Judge Lummus submits that every judge in the state should serve during good behavior because, he says, "It is one thing to let the heathern rage, to meet calumny with unfurrowed brow, and wait for reason to prevail when one's livelihood is not at stake. It is quite another thing for a judge to face the fact that if he loses the friendship of some newspaper, some powerful lawyer, or some political leader, he may be cast out of office to begin life anew in late middle age; that his children can no longer be educated; that his family may suffer privation; and that his old age may be spent in want" (p. 90). If, however, tenure during good behavior should be a political impossibility he favors a plan of appointment by the Minister and his council with popular vote at the regular election at the end of each term on the sole question of whether the incumbent should be continued in office. If he is voted out his successor would be selected by the Minister and the council.

In the above plan of judicial selection and tenure Judge Lummus sees the surest way of obtaining and preserving an able, independent and impartial judiciary.

Most of the views expressed in the book upon the qualifications, duties, selection and tenure of judges have been expressed before and are more or less familiar, but they are made more persuasive and convincing by his restatement. The compact sentences and terse statements give to Judge Lummus' pronouncements almost the force of proverbs. Typical of the author's store of aphorisms are: "It is important that justice seem impartial as well as be impartial," and, "Like most people jurors hate crime only in the abstract and dislike severity towards a man they have seen in the flesh."

A discussion of this book would be incomplete without some mention of the copious footnotes. In them proportionately is as much meat as in the text. They contain the views of some of the most intelligent and best-informed critics of our judicial system.

The Trial Judge is a highly readable book which the thoughtful layman interested in government will find quite as absorbing as will the lawyer.

SUSIE SHARP.

Reidsville, N. C.

The One-House Legislature. By John P. Senning. New York: McGraw-Hill Book Co. 1937. Pp. xviii, 118. $1.50.

Professor Senning of the University of Nebraska was one of the leading advocates of the unicameral legislature for that state, and is well qualified by ability and experience to prepare a book upon this subject. The present volume properly has a foreword by Senator George W. Norris whose advocacy was chiefly responsible for the adoption of a plan for the one-house legislature by the people of Nebraska in 1934.

The first session of the Nebraska legislature under the new plan was held in 1937, but Professor Senning's book was written in 1936 and, of necessity, deals with a governmental reform which has been adopted but not yet put to the test of practical experience. Chapter I on the theory and practice of bicameralism presents an interesting and accurate account of the two-house legislature in the American states, and makes a strong case against the bicameral system. The author does not, however, attempt to show that the unicameral system is practicable in our federal government; and he does not meet the argument that in some states a proper balance between urban and rural populations may require a bicameral legislature. Chapter II traces briefly and accurately the unicameral movement in the several states since 1912; and Chapter III gives a detailed and interesting account of the adoption of the unicameral system by Nebraska. Chapter IV presents the case for the one-house legislature. The author says here that "unfortunately no one-house legislature can be taken as a basis for comparison," and that "the single-chambered legislatures in foreign countries operate under conditions so dissimilar to those of the American states that comparison would be utterly futile" (p. 75). This statement is largely true, but the reviewer would have liked to see some discussion of foreign experience, and a fuller discussion of the use of the small single-chambered municipal council in the cities of this country. The author's fifth and final chapter deals with suggested trends for the unicameral legislature, and discusses problems of committee organization, legislative drafting, and the legislative council. Many of the suggestions here apply equally to the two houses under a bicameral system. He comments upon the unsatisfactory method of committee reporting in the past and recommends that: "A complete record of all committee proceedings, including hearings, should accompany a bill when it is returned to the house" (p. 92). The report of all committee hearings to the legislative body may be of doubtful value, but, whether the system be unicameral or bicameral, state legislative committees should be required to report fully the reasons for their recommendations. Such a plan is satisfactorily employed by Congressional committees.

Professor Senning is an advocate, but his advocacy is sustained by knowledge and experience. His work is not a mere bit of academic championship. He has made a real contribution to the subject of legislative organization. Nebraska is undertaking an experiment that will be watched with interest by other states, and we may well hope that the author of this volume will report the result of that experience in a new edition of the present book or in a later publication.

WALTER F. DODD.

Chicago, Ill.

Negroes and the Law. By Fitzhugh Lee Styles.[1] Boston: Christopher Publishing House. 1937. Pp. xi, 320. $3.50.

This book is not aptly named, since it does not present the systematic treatment which the title would lead one to expect. Although it is rather a hodge-podge of history, celebrated cases, biographies of Negro lawyers, orations, maxims, news items, etc., the author has so selected and arranged this material, interspersed with a few of his own thoughts, as to furnish a thin thread of logic throughout. Being dedicated to Negro lawyers, the work is primarily designed to give them information on the wrongs suffered by Negroes, instruction on how to correct these, and inspiration to aid the Negro cause.

As a foundation for his book the author shows the injustices to which the Negro race is subjected, as, for example, interference with suffrage rights, the denial of a jury trial, deprivation of the right to adequate counsel, lynchings, the Jim Crow laws, discrimination in the matter of schools, etc. On this groundwork he builds a manual showing the existing legal rights and remedies that are available to the Negro for his protection. By the use of these the author evidently believes that the Negro attorney has a great opportunity to lead in the race's upward march and calls upon him to give up personal, pecuniary gain and embark upon a crusade to lift the race from its present plight. Moreover, he shows that there is a great need for a larger number of intelligent and well-trained Negro lawyers who will make duty to the race their paramount consideration. As an aid to the proponents of the Negro cause the author sets forth celebrated cases in which both White and Negro lawyers participated, biographical sketches of famous Negroes, and some of their most famous orations. These speeches are well chosen and some of them give an excellent idea of the educated Negro's attitude toward race relations at the time they were delivered, as, for instance, the very able address in 1874 on the then-pending civil rights legislation by colored Congressman Robert B. Elliott of South Carolina.

[1] Member of the Philadelphia Bar.

The chapters on "The Constitutional Rights of the Negro," and "Cracking Closed University Doors," written by two eminent Negro lawyers, are well done and portray a keen insight into the problems presented. In the latter chapter Charles H. Houston cites the need for graduate and professional training for Negroes in the South. He takes a position of no compromise and urges a legal fight to the finish in order to obtain equal facilities in the state-supported universities of the South. He seems to overlook the possibility that the apparently easy social adjustments which have attended the successful attempt of Negroes to enter the University of Maryland Law School might not follow such a bold stroke in the lower South. Indeed there is a chance that such tactics might react to the detriment of the cause of Negro education in the Southern states. This "uncompromising" attitude is typical of the whole book and is evidently the result of the author's faith in the purely legalistic methods advocated by the National Association for the Advancement of Colored People.

The author would have made a stronger impression had he used more care in organizing his material. The selections in the opening chapter lack coherence in that the author has attempted to present too many phases of the problem and shifts from one subject to another and back again without a proper regard for the principles of organization. Furthermore, he would have made a more valuable contribution had he expressed boldly his own sentiments instead of employing such a volume of quoted passages. His discussion of the Civil Rights Acts of the northern states is merely a manual of advice to those who wish to invoke the protection afforded by these statutes. There is no discussion of the acts themselves or how they are construed by the courts. A more thorough analysis would have been welcomed by those who are studying the race problem. By reason of this failure the author has neglected to take full advantage of a splendid opportunity to aid the cause which he has espoused. One can not read the book without wondering why he did not make at least some further effort to uncover the vast amount of statutory and case material which might have been readily brought to the attention of his colleagues in the struggle to obtain fairer treatment for the Negro in the courts and legislative halls of the nation.

CHARLES S. MANGUM, JR.

Chapel Hill, N. C.